

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ANDREA PAPPAGALLO,

Plaintiff,

-vs-

Case No. 20-cv-10422

Hon. Stephanie Dawkins Davis

TENNECO AUTOMOTIVE OPERATING  
COMPANY SEVERANCE BENEFIT PLAN,  
Effective as of July 20, 2018, TENNECO  
AUTOMOTIVE OPERATING COMPANY  
INC., and TENNECO INC.,  
jointly and severally,

Defendants.

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Barry S. Fagan (P34275)  
Jennifer L. McManus (P65976)  
FAGAN McMANUS, P.C.  
Attorneys for Plaintiff  
25892 Woodward Avenue  
Royal Oak, MI 48067-0910  
(248) 542-6300  
[bfagan@faganlawpc.com](mailto:bfagan@faganlawpc.com)  
[jmcmanus@faganlawpc.com](mailto:jmcmanus@faganlawpc.com)

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Richard E. Nowak (IL 6302664)  
Samuel D. Block (IL 6323648)  
Samuel P. Myler (IL 6309755)  
Mayer Brown LLP  
Attorneys for Defendants  
71 South Wacker Drive  
Chicago, IL 60606  
(312) 701-8809  
[rnowak@mayerbrown.com](mailto:rnowak@mayerbrown.com)  
[sblock@mayerbrown.com](mailto:sblock@mayerbrown.com)  
[smyler@mayerbrown.com](mailto:smyler@mayerbrown.com)

Michael G. Brady (P57331)  
WARNER NORCROSS & JUDD LLP  
Attorneys for Defendants  
2000 Town Center, Suite 2700  
Southfield, MI 48075-1318  
(248) 784-5032  
[mbrady@wnj.com](mailto:mbrady@wnj.com)

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**PLAINTIFF'S STATEMENT AS TO THE  
APPROPRIATE STANDARD OF REVIEW IN THIS CASE**

Plaintiff, by and through his attorneys, FAGAN McMANUS, P.C., hereby submits Plaintiff's Statement as to the Appropriate Standard of Review in this Case as follows:

It is Plaintiff's position that the standard of review in this case is *de novo*. The basis for Plaintiff's position is that the Plan Administrator, identified as Defendant Tenneco Automotive Operating Company Inc. in the Tenneco Automotive Operating Company Inc, Severance Benefit Plan and Summary Plan Description (Effective as of July 20, 2018), did not make the decision regarding Plaintiff's claim for benefits or Plaintiff's appeal of the denial of his claim for benefits. Instead, Defendant Tenneco Inc. made the decision on both the claim and the appeal. In addition, an individual named Peter D. Acker signed the letters denying the claim and appeal on Defendant Tenneco Inc. letterhead. In the letter denying the appeal, Mr. Acker identified himself as the Plan Administrator.

When the benefits decision is made by a body other than the one authorized by the procedures set forth in the benefit plan, federal courts review the benefits decision *de novo*. Shelby County Health Care Corporation v. The Majestic Star Casino, LLC, 581 F.3d 355 (6<sup>th</sup> Cir. 2009)(holding that although the plan administrator was delegated discretionary authority to interpret the Plan, where the administrator failed to

*exercise* that discretion because it let someone else make the benefits determination, *de novo* review is appropriate); Sanford v. Harvard Industries, Inc., 262 F.3d 590 (6<sup>th</sup> Cir. 2001)(holding that where an unauthorized body that does not have fiduciary discretion to determine benefits eligibility renders such a decision, deferential review is not warranted and *de novo* review is appropriate).

FAGAN McMANUS, P.C.

By: /s/ Barry S. Fagan

Barry S. Fagan (P34275)  
Jennifer L. McManus (P65976)  
Attorney for Plaintiff  
25892 Woodward Avenue  
Royal Oak, MI 48067-0910  
(248) 542-6300  
[bfagan@faganlawpc.com](mailto:bfagan@faganlawpc.com)  
[jmcmanus@faganlawpc.com](mailto:jmcmanus@faganlawpc.com)

Dated: July 2, 2020

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Jennifer L. McManus (P65976)  
FAGAN McMANUS, P.C.  
Attorneys for Plaintiff  
25892 Woodward Avenue  
Royal Oak, MI 48067-0910  
(248) 542-6300  
[bfagan@faganlawpc.com](mailto:bfagan@faganlawpc.com)  
[jmcmanus@faganlawpc.com](mailto:jmcmanus@faganlawpc.com)

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Richard E. Nowak (IL 6302664)  
Samuel D. Block (IL 6323648)  
Samuel P. Myler (IL 6309755)  
Mayer Brown LLP  
Attorneys for Defendants  
71 South Wacker Drive  
Chicago, IL 60606  
(312) 701-8809  
[rnowak@mayerbrown.com](mailto:rnowak@mayerbrown.com)  
[sblock@mayerbrown.com](mailto:sblock@mayerbrown.com)  
[smyler@mayerbrown.com](mailto:smyler@mayerbrown.com)

Michael G. Brady (P57331)  
WARNER NORCROSS & JUDD LLP  
Attorneys for Defendants  
2000 Town Center, Suite 2700  
Southfield, MI 48075-1318  
(248) 784-5032  
[mbrady@wnj.com](mailto:mbrady@wnj.com)

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**PROOF OF SERVICE**

I hereby certify that on July 2, 2020, I electronically filed:

**PLAINTIFF'S STATEMENT AS TO THE  
APPROPRIATE STANDARD OF REVIEW IN THIS CASE**

with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

- Michael G. Brady [mbrady@wnj.com](mailto:mbrady@wnj.com), [tlias@wnj.com](mailto:tlias@wnj.com),  
[tparrish@wnj.com](mailto:tparrish@wnj.com)
- Richard Nowak [rnowak@mayerbrown.com](mailto:rnowak@mayerbrown.com),  
[courtnotification@mayerbrown.com](mailto:courtnotification@mayerbrown.com)
- Samuel Block [sblock@mayerbrown.com](mailto:sblock@mayerbrown.com)
- Samuel P Myler [smyler@mayerbrown.com](mailto:smyler@mayerbrown.com),  
[3708550420@filings.docketbird.com](mailto:3708550420@filings.docketbird.com),  
[courtnotification@mayerbrown.com](mailto:courtnotification@mayerbrown.com)

and I hereby certify that I have mailed by United States Postal Service the papers to the following non-ECF participants:

\_\_\_\_(none)\_\_\_\_.

Respectfully submitted,  
FAGAN McMANUS, P.C.

By: /s/ Barry S. Fagan  
Barry S. Fagan (P34275)  
Jennifer L. McManus (P65976)  
Attorney for Plaintiff  
25892 Woodward Avenue  
Royal Oak, MI 48067-0910  
(248) 542-6300  
[bfagan@faganlawpc.com](mailto:bfagan@faganlawpc.com)  
[jmcmanus@faganlawpc.com](mailto:jmcmanus@faganlawpc.com)

Dated: July 2, 2020